

## SENATE BILL NO. 452

INTRODUCED BY CURTISS, GEBHARDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMPLEMENTATION OF THE FEDERAL MANDATES ACT; SPECIFYING CRITERIA FOR NOTICES OF ADMINISTRATIVE RULEMAKING IMPLEMENTING FEDERAL MANDATES; ~~PROVIDING FOR A REVIEW OF AGENCY COMPLIANCE WITH THE FEDERAL MANDATES ACT IN AUDITS CONDUCTED BY THE LEGISLATIVE AUDITOR;~~ PROVIDING FOR INCLUSION OF CERTAIN INFORMATION AND RECOMMENDATIONS CONCERNING FEDERAL MANDATES IN THE STATE BUDGETING PROCESS; AMENDING SECTIONS 2-1-405, 2-1-408, 2-4-302, 5-13-308, AND 17-7-111, AND 17-7-124, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 2-1-405, MCA, IS AMENDED TO READ:**

**"2-1-405. Requirement for budget recommendation -- reporting on federal mandates -- savings.**

Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations regarding any changes in state statutes that are necessary to provide the state agency with authority to implement state policies in a way that will create additional savings or greater reductions in regulatory burdens in the governor's budget based upon the information."

**SECTION 2. SECTION 2-1-408, MCA, IS AMENDED TO READ:**

**"2-1-408. Legislative review and oversight. (1)** In exercising its authority as an equal branch of state

government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature, including the legislative auditor."

**Section 3.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which notification was given to the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was notified, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

- (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
- (ii) the number of persons affected.

(d) If the agency proposes to adopt or amend a rule to respond to any mandates contained in a federal

1 statute, the notice must state how the criteria in 2-1-404(2) have been applied.

2 (2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as  
3 provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to  
4 interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings,  
5 and to the office of any professional, trade, or industrial society or organization or member of those entities who  
6 has filed a request with the appropriate administrative rule review committee when the request has been  
7 forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of  
8 interested persons and the subject or subjects in which each person on the list is interested. A person who  
9 submits a written comment or attends a hearing in regard to proposed agency action under this part must be  
10 informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice  
11 an advisement explaining how persons may be placed on the list of interested persons and if it complies with  
12 subsection (7).

13 (b) The appropriate administrative rule review committee shall forward a list of all organizations or  
14 persons who have submitted a request to be informed of agency actions to the agencies that the committee  
15 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request  
16 of any person requesting to be added to or deleted from the list.

17 (c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the  
18 agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other  
19 electronic communications system available to the public.

20 (d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice  
21 for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor  
22 of the legislation. If the legislation affected more than one program, notice must be given to the primary sponsor  
23 pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for  
24 a program.

25 (ii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as  
26 required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor notified under  
27 subsection (2)(d)(i).

28 (3) If a statute provides for a method of publication different from that provided in subsection (2), the  
29 affected agency shall comply with the statute in addition to the requirements contained in this section. However,  
30 the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying primary sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

~~Section 2. Section 5-13-308, MCA, is amended to read:~~

~~"5-13-308. Audit standards and objectives. The objectives of financial compliance, performance, and information system audits of state agencies or their programs conducted by the legislative auditor are formulated, defined, and conducted in accordance with industry standards established for auditing to determine whether:~~

~~———— (1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, effectively, and in accordance with legislative intent and in accordance with Title 2, chapter 1, part 4;~~

~~———— (2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;~~

~~———— (3) the agency collects and accounts properly for all revenues and receipts arising from its activities;~~

~~———— (4) the assets, including information technology, of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;~~

~~———— (5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations."~~

**Section 4.** Section 17-7-111, MCA, is amended to read:

**"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in

1 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section  
2 or the instructions given for completing the forms. The forms must include a section that allows an agency to  
3 comply with 2-1-405.

4 (3) The agency budget request must set forth a balanced financial plan for the agency completing the  
5 forms for each fiscal year of the ensuing biennium. The plan must consist of:

6 (a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that  
7 transfer profits to the general fund or to an account subject to appropriation for the current base budget  
8 expenditures, including statutory appropriations, and for each present law adjustment and new proposal request  
9 setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing  
10 a balance between the total proposed disbursements and the total anticipated receipts, together with the other  
11 means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding  
12 figures for the last-completed fiscal year and the fiscal year in progress;

13 (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the  
14 current biennium and estimated for the subsequent biennium;

15 (c) a statement of the agency mission and a statement of goals and objectives for each program of the  
16 agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable  
17 information to enable the legislature to formulate an appropriations policy regarding the agency and its programs  
18 and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals  
19 and objectives.

20 (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE  
21 and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

22 (e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements  
23 for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement  
24 category;

25 (f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general  
26 appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the  
27 budget director. Each agency plan must include base budget reductions that reflect the required percentage  
28 reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations  
29 of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff  
30 under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund

1 balances to the general fund. The plan must include:

2 (i) a prioritized list of services that would be eliminated or reduced;

3 (ii) for each service included in the prioritized list, the savings that would result from the elimination or  
4 reduction; and

5 (iii) the consequences or impacts of the proposed elimination or reduction of each service.

6 (g) a reference for each new information technology proposal stating whether the new proposal is  
7 included in the approved agency information technology plan as required in 2-17-523; and

8 (h) other information the budget director feels is necessary for the preparation of a budget.

9 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with  
10 17-7-112:

11 (a) detailed recommendations for the state long-range building program. Each recommendation must  
12 be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

13 (b) a statewide project budget summary as provided in 2-17-526;

14 (c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with  
15 the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this  
16 subsection is not an unfair labor practice under 39-31-401.

17 (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part  
18 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and  
19 development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under  
20 Title 90, chapter 6, part 7.

21 (5) The board of regents shall submit, with its budget request for each university unit in accordance with  
22 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this  
23 subsection (5). The report must include the following information for each year of the biennium, contrasted with  
24 the same information for the last-completed fiscal year and the fiscal year in progress:

25 (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

26 (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding  
27 bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding  
28 requirements for each bond indenture; and

29 (c) a schedule showing the total funds available from each bond indenture and its associated accounts,  
30 with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project

1 for each year of the current and ensuing bienniums.

2 (6) (a) The department of revenue shall make Montana individual income tax information available by  
3 removing names, addresses, and social security numbers and substituting in their place a state accounting record  
4 identifier number. Except for the purposes of complying with federal law, the department may not alter the data  
5 in any other way.

6 (b) The department of revenue shall provide the name and address of a taxpayer on written request of  
7 the budget director when the values on the requested return, including estimated payments, are considered  
8 necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially  
9 affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or  
10 payments on the analysis being performed."

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12 ~~Section 4. Section 17-7-124, MCA, is amended to read:~~

13 ~~"17-7-124. Additional budget data. In addition to the budget required in 17-7-123, the governor shall~~  
14 ~~prepare and make available on request:~~

15 ~~(1) a detailed analysis of receipts by accounting entity within each fund type indicating classification and~~  
16 ~~source of funds; and~~

17 ~~(2) recommendations regarding any changes in state statutes that are necessary to provide the state~~  
18 ~~agency with authority to implement state policies in a way that will create additional savings or greater reductions~~  
19 ~~in regulatory burdens as provided in 2-1-405."~~

20  
21 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2009.

22 - END -